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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,993	07/18/2003	Henry Welling Lane	DIOP-02602	3051
34209	7590	12/28/2004	EXAMINER	
LAW OFFICE OF DEREK J. WESTBERG 2 NORTH SECOND STREET, SUITE 1390 SAN JOSE, CA 95113			NERBUN, PETER P	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/622,993	LANE ET AL.
<b>Examiner</b>	<b>Art Unit</b>	
Peter P. Nerbun	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 26-32 and 38 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 26-32 and 38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>102003,112503,42304</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamb (U.S.P. 540,746) in view of Tee, Jr. (U.S.P. 5,416536). (Lamb is newly cited; Tee, Jr. is of record.) The patent to Lamb discloses an apparatus for shielding a user's eye while allowing the user's eye contact with air, the apparatus comprising an eyeshield "b", Figs. 1, 2 comprising a single layer of material and a cushioning structure "B" affixed to at least a portion of the perimeter of the eyeshield wherein the cushioning structure includes a plurality of vents "i", "v" formed by holes in the cushioning structure for allowing air to circulate behind the eyeshield. To construct the eye shielding apparatus of Lamb with an optically correct viewing area in the eye shield as suggested by Tee, Jr. (at col. 9, lines 5-7) would have been obvious since a portion of the wearer's visual field would be free from distortion thereby enabling more capable vision. Further to eliminate the frame section "g" of Lamb would have been obvious since Lamb states that the eyeshield lenses "b" may be formed as a single integral lens instead of in two pieces (see page 1, lines 95-96). By forming the eyeshield as a single integral lens there is no need to bind lenses together which is the stated purpose the thin frame "g" (see page 1, lines 46-48 of Lamb). Accordingly the frame "g" may be eliminated since its function is not required with a single integral lens.

Claims 26-30, 32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipcott (U.S.P. 5,245,709) in view Russell (U.S.P. 4,779,291) and Tee, Jr. (Russell is newly cited.) The patent to Shipcott discloses an apparatus for shielding a user's eye while allowing the user's eye contact with air, the apparatus comprising an eyeshield 12, Fig. 1 comprising a single layer of material and a cushioning structure 24, 28 affixed to at least a portion of the perimeter of the eyeshield wherein the cushioning structure includes a plurality of vents (at 26) for allowing air to circulate behind the eyeshield and wherein at least a nose-bridge portion of the cushioning structure is affixed to a single surface of the eyeshield. To construct the eye shielding apparatus of Shipcott with an optically correct viewing area in the eye shield as suggested by Tee, Jr. (at col. 9, lines 5-7) would have been obvious since a portion of the wearer's visual field would be free from distortion thereby enabling more capable vision. Further to utilize a nose bridge section that is affixed only to a single surface of the eyeshield as suggested by Russell (at 26, Fig. 3) would have been obvious since the resulting structure would be simplified and therefore more economical to manufacture.

Applicant's arguments with respect to claims 26-32 and 38 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P. Nerbun whose telephone number is 571-272-4993. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 3765

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Peter Nerbun  
December 21, 2004

  
Peter Nerbun  
**Primary Examiner**